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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-447

SAUQUOIT FIBERS COMPANY, INC.,
Petitioner,

v.

LEESONA CORPORATION, THE PERMATWIST COMPANY, WARREN A. SEEM, FREDERICK D. TECCE, NICHOLAS J. STODDARD AND HAROLD P. BERGER,
Respondents.

OPPOSITION BY RESPONDENT LEESONA CORPORATION TO BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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INDEX

Page

I. No Basis Exists for Reviewing The Non-Final Order Below Since a Motion to Transfer Cases For Trial is Pending in the District Court. ... 1

II. Conclusion 3

TABLE OF AUTHORITIES CITED

Cases:

In re Yarn Processing Patent Validity Litigation, 341 F. Supp. 376 (JPML 1972) 2

Statutes:

28 U.S.C. § 1404 2

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I. NO BASIS EXISTS FOR REVIEWING THE NON-FINAL ORDER BELOW SINCE A MOTION TO TRANSFER CASES FOR TRIAL IS PENDING IN THE DISTRICT COURT.

The Duplan Corporation et al. and Kayser-Roth Corporation et al., appellees in the Court below, have filed a "Brief in Support of Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit."

In their brief, The Duplan Corporation et al. and Kayser-Roth Corporation et al. state:

> "The multi-district nature of the litigation in which this question arises, with cases to be returned to the Second, Third and Fourth Circuits, portends a further proliferation of this confusion." *Duplan & Kayser-Roth Brief at 19.

The suggested dispersion of these various cases to four different circuits is unlikely to occur. The Multidistrict Panel, in consolidating these cases for pretrial purposes, stated:

> ". . . we believe it our duty to select the transferee district best able to serve as trial forum as well.
>
> * * *
>
> ". . . it is peculiarly desirable that in such multidistrict patent litigation the transfer under § 1407 for pretrial proceedings be made to a district in which full pretrial and trial of the single and double heater patent issues can be completed and final judgment can be entered in a reasonable time, thereby concluding all issues and all patent owners if the patent is found invalid. Only in the Southern District of Florida can we say with assurance that this can be done." *In re Yarn Processing Patent Validity Litigation*, 341 F. Supp. 376 (JPML 1972) at 382 and 383-84.

On July 7, 1972, Leesona filed in the United States District Court for the Southern District of Florida a motion to transfer all of the cases involving Sauquoit, Duplan et al. and Kayser-Roth et al. to the Southern District of Florida under 28 U.S.C. § 1404(a) for consolidated trial proceedings. Although the District

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* The same erroneous assertion was made in the brief filed on December 2, 1974.

Court has not yet ruled on Leesona's motion, a ruling on Leesona's transfer motion is a prerequisite to *any* trial proceedings in *any* district court.

II. CONCLUSION

In light of the non-final nature of this litigation, Leesona's pending transfer motion, the subsequent misuse ruling, the existence of disputed factual questions and the several independent, alternative grounds for sustaining the Court of Appeals' reversal, the petition for certiorari should be denied.

Respectfully submitted,

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December 4, 1974